

**STATE OF WASHINGTON**  
**DEPARTMENT OF RETIREMENT SYSTEMS**  
**OLYMPIA, WASHINGTON**

**REQUEST FOR PROPOSALS**  
RFP NO. 99-11

**PROJECT TITLE: CONSULTING SERVICES FOR RFP AND PROCUREMENT OF  
THIRD PARTY RECORD KEEPER**

**PROPOSAL DUE DATE: March 24, 1999**

**EXPECTED TIME PERIOD FOR CONTRACT: April 16, 1999, to December 31, 1999**

**CONSULTANT ELIGIBILITY:** This procurement is open to those companies who satisfy the minimum qualifications stated herein and who are available for work in Washington State.

**CONTENTS OF THE REQUEST FOR PROPOSALS**

1. Introduction
2. General Information for Respondents
3. Executive Summary
4. Management Proposal
5. Technical Proposal
6. Cost Proposal
7. Supplemental Information
8. Evaluation and Contract Award
9. DRS Rights
10. Appendix
  - Exhibit A – Certification and Assurances
  - Exhibit B – Sample Contract with General Terms and Conditions
  - Exhibit C – Teachers' Retirement System Plan 3 Member Handbook
  - Exhibit D – Deferred Compensation Program Summary and Regulations

## TABLE OF CONTENTS

<b>1.</b>	<b>INTRODUCTION</b>	<b>1</b>
1.1	Purpose	1
1.2	Background	1
1.3	Scope of Services	2
1.4	Consultant Qualifications	3
1.5	Period of Performance	3
<b>2.</b>	<b>GENERAL INFORMATION FOR RESPONDENTS</b>	<b>3</b>
2.1	RFP Coordinator	3
2.2	Submissions	4
2.3	Proposal Format	4
2.4	Signatures	5
2.5	Estimated Schedule of Activities	5
2.6	Filing Requirement	5
2.7	Failure to Comply	5
2.8	Revisions to the RFP	5
2.9	Submission Limit	6
2.10	Most Favorable Terms	6
2.11	Obligation to Contract	6
2.12	Costs to Propose	6
2.13	Commitment of Funds	6
2.14	Insurance Coverage	6
<b>3.</b>	<b>EXECUTIVE SUMMARY</b>	<b>7</b>
<b>4.</b>	<b>MANAGEMENT PROPOSAL</b>	<b>7</b>
4.1	Identifying Information	7
4.2	Experience of the Company	8
<b>5.</b>	<b>TECHNICAL PROPOSAL</b>	<b>9</b>
5.1	Project Scope of Work	9
5.2	Work Plan and Schedule	9
<b>6.</b>	<b>COST PROPOSAL</b>	<b>9</b>
6.1	Identify Costs	9
6.2	Rates	10
6.3	Award Not Based on Cost Alone	10

<b>7.</b>	<b>SUPPLEMENTAL INFORMATION</b>	<b>10</b>
<b>8.</b>	<b>EVALUATION AND CONTRACT AWARD</b>	<b>10</b>
8.1	Evaluation Team	10
8.2	Responsiveness	10
8.3	Award Based on Multiple Factors	10
8.4	Evaluation Weighting Criteria	11
8.5	Notification to Unsuccessful Respondents	11
8.6	General Terms and Conditions	11
8.7	Debriefing of Unsuccessful Respondents	11
8.8	Protest Procedure	12
8.9	Proprietary Information/Public Disclosure	13
<b>9.</b>	<b>DRS RIGHTS</b>	<b>14</b>
9.1	Proposal Rejections	14
9.2	Contract Award	14
9.3	Publicity	14
9.4	Waivers	14
9.5	Records Retention	14
<b>10.</b>	<b>APPENDIX</b>	<b>15</b>
Exhibit A	Certification and Assurances	
Exhibit B	Sample Contract with General Terms and Conditions	
Exhibit C	Teachers' Retirement System Plan 3 Member Handbook	
Exhibit D	Deferred Compensation Program Summary and Regulations	

**Washington State Department of Retirement Systems**

**CONSULTING SERVICES FOR RFP AND PROCUREMENT  
OF THIRD PARTY RECORD KEEPER**

**1. INTRODUCTION**

**1.1 PURPOSE**

The Washington State Department of Retirement Systems (DRS) is seeking a Company to assist with the preparation and evaluation of Request for Proposals (RFP) to secure third-party record keeping services for one or more of Washington State's defined contribution plans. These could include the School Employees' Retirement System (SERS) Plan 3 scheduled for implementation in September 2000, the Teachers' Retirement System Plan 3, and any other defined contribution plans made available by the State Legislature. The RFP may also include record keeping services for the state Deferred Compensation Program (DCP). The Company will also assist in the preparation and evaluation of an RFP to secure transfer education services for SERS and possibly for other defined contribution plans, which may be made available by the Legislature.

**1.2 BACKGROUND**

In addition to nine defined benefit retirement plans, DRS currently administers the state's Deferred Compensation Program (DCP) and two hybrid plans that include both defined benefit and defined contribution elements: Teachers' Retirement System (TRS) Plan 3, and, effective September 2000, the School Employees' Retirement System (SERS) Plan 3.

The defined contribution portion of SERS Plan 3 will offer members the option to invest their contributions in a monthly valued fund managed by the Washington State Investment Board (WSIB) or in daily valued self-directed options. At this time, the number of participants that will be in SERS Plan 3 is unknown. When the legislation creating SERS passed, the number of participants was estimated at 22,000.

TRS Plan 3 provides members the same investment options as described for SERS Plan 3. DRS will be seeking record keeping services for TRS Plan 3 pending the expiration of the current contract in accordance with Washington State procurement requirements. TRS Plan 3 has approximately 38,000 participants with over \$1 billion dollars in plan assets.

DCP is currently conducting a study to determine the feasibility of transferring record keeping services from the Washington State Department of Personnel to a third-party record keeper. The forthcoming RFP may include record keeping

proposals for replacement of the current DCP system. DCP has approximately 36,000 participants with over \$1 billion dollars in plan assets.

1.3 SCOPE OF SERVICES

The majority of the services described in this RFP will be conducted in Olympia, Washington. The scope of services to be provided by the Company obtained through this RFP includes the following items:

- 1.3.1 Advise DRS regarding the desirability of entering into a single provider contract for record keeping services for all three plans versus entering into one or more contractual agreements, and assist in designing and issuing RFPs to obtain appropriate responses related to those options.
- 1.3.2 Validate DRS business requirements and ensure those requirements are reflected in the RFP(s) to elicit record keeper proposal(s) for unbundled services for one IRC 401 (a) plan, and possibly a second IRC 401 (a) plan and an IRC 457 plan. The RFP(s) must be concise and effective and emphasize the specific requirements of the Washington State Department of Retirement Systems. The work will include assisting DRS with writing, advertising, and distributing the RFP; and developing evaluation tools. **The RFP for record keeping services is expected to be issued no later than May 14, with September 1999 the current estimated target date for a signed contract.**
- 1.3.3 Assist DRS in preparation of an RFP to elicit proposals for member transfer education activities related to SERS Plan 3. The work will include assisting DRS with writing, advertising, and distributing the RFP; and developing evaluation tools. **Current estimated target date for a signed contract for education activities is December 1999.**
- 1.3.4 Assist DRS in administering the RFP process. This includes, but is not limited to, establishing schedules, facilitating meetings, documenting issues, and responding to general inquiries.
- 1.3.5 Advise DRS regarding the most equitable participant fee structure.
- 1.3.6 Prepare draft contracts and assist with the contract negotiation process.
- 1.3.7 As required, meet with or make presentations to various DRS constituent groups related to the solicitation of a third party record keeper and associated topics.
- 1.3.8 Assist in the development of a strategy to successfully migrate from the current record keeping system(s) to one or more new record keepers.

## Request for Proposals 99-11

- 1.3.9 Assist in the execution of any and all other normal and desirable related duties such a project may require, as mutually agreed upon between DRS and the selected Company.

### 1.4 CONSULTANT QUALIFICATIONS

- 1.4.1 Demonstrated knowledge of IRC 401 (a) defined contribution plans and IRC 457 deferred compensation plans. Because of the complexity and comprehensiveness of the RFP that will be advertised for a third-party record keeper, the Respondent must have substantial knowledge of all aspects of plan operations and administration.
- 1.4.2 Demonstrated knowledge and experience in designing and drafting record keeping RFPs. The Respondent should also have experience in assisting in all phases of the selection process.
- 1.4.3 Demonstrated knowledge and experience in designing RFPs for member transfer education programs.
- 1.4.4 Demonstrated knowledge of and experience with centralized payroll systems that capture information from multiple sources.
- 1.4.5 **RESTRICTIONS:** The Company awarded this contract will not be eligible to submit a response to or be a part of any other company's response to the RFP issued for third-party record keeping or member transfer education services. Companies holding alliance, partnership, or other business affiliations with the successful Respondent of this RFP will be excluded from eligibility to respond to the record keeping or member transfer education services RFPs. Respondents must indicate their understanding and agreement to this by signing the Certification and Assurances statement (Exhibit A).

### 1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled for April 16, 1999, to December 31, 1999. Amendments extending the period of performance, if any, shall be at the sole discretion of DRS.

## 2. GENERAL INFORMATION FOR RESPONDENTS

### 2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact for this selection action. Throughout the duration of the procurement process, all questions and other

## Request for Proposals 99-11

communications concerning the procurement are to be directed, in writing, to the contact listed below. **Unauthorized contact regarding the procurement with other DRS staff after issuance of this RFP will disqualify the Respondent.**

Washington State Department of Retirement Systems  
P.O. Box 48380  
Olympia, WA 98504-8380  
ATTN: Jeff Wickman, RFP Coordinator  
Telephone: (360) 664-7288  
FAX: (360) 753-5397  
E-mail: [jeffw@drs.wa.gov](mailto:jeffw@drs.wa.gov)

### 2.2 SUBMISSIONS

Submittal of five (5) copies of the proposal is required. Two copies must have original signatures and three copies can have photocopied signatures.

Two of the five copies must be unbound. One of these unbound copies must contain original signatures and must be marked "Master Copy."

The five (5) copies of the proposal shall be received at the following address on, or before, 5:00 p.m. Pacific Standard Time, March 24, 1999:

Washington State Department of Retirement Systems  
Post Office Box 48380  
6835 Capitol Blvd  
Tumwater Washington 98504-8380  
ATTN: Jeff Wickman

Respondents mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. **Proposals may not be transmitted using electronic media such as facsimile transmission or electronic mail.** Notwithstanding the provisions of RCW 1.12.070, postmarks will not be considered as date received for the purposes of this RFP. Late proposals will not be accepted, nor will time extensions be granted.

The outside of the proposals packaging is to clearly identify the RFP being responded to, including the RFP number (99-11).

All proposals and accompanying documentation become the property of DRS and will not be returned.

### 2.3 PROPOSAL FORMAT

All proposals must be on eight and one-half by eleven (8 ½ x 11) inch paper and placed in binders with tabs separating the major sections of the proposal. The

## Request for Proposals 99-11

sections shall include:

- 1) Letter of Submittal, including signed Certification and Assurances (Exhibit A of this RFP);
- 2) Executive Summary;
- 3) Management Proposal;
- 4) Technical Proposal;
- 5) Cost Proposal; and
- 6) Any supplemental information the Respondent wishes to include relevant to this RFP.

Responses should be in the order outlined in this RFP.

### 2.4 SIGNATURES

The Letter of Submittal and the Certifications and Assurances form must be signed and dated by a person authorized to legally bind the Respondent to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship.

### 2.5 **Estimated** Schedule of Activities

<b>Event</b>	<b>Date</b>
Issue RFP	March 10, 1999
Proposals Due	March 24, 1999
Evaluation Period	March 25 to March 29, 1999
Interviews, if necessary	March 29 1999
Announcement of apparently successful Respondent	March 30, 1999
Contract begins	On or about April 16, 1999

### 2.6 FILING REQUIREMENT

Under the provisions of Chapter 39.29 RCW, this personal services contract is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective, and no work thereunder shall be commenced, nor payment made therefor, until ten (10) working days following the date of filing and until approved by OFM. In the event OFM does not approve the contract, the contract shall be null and void.

### 2.7 FAILURE TO COMPLY

The Respondent is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

### 2.8 REVISIONS TO THE RFP

DRS reserves the right to revise the RFP and/or to issue addenda to the RFP. DRS also reserves the right to cancel or to reissue the RFP in whole or in part,



## Request for Proposals 99-11

prior to execution of a contract. In the event it becomes necessary to revise any part of the RFP, addenda will be provided to all those who received the RFP.

### 2.9 SUBMISSION LIMIT

After submission, Respondents will not be allowed to amend the proposal. Responses consisting solely of marketing materials are not acceptable and will be rejected.

### 2.10 MOST FAVORABLE TERMS

DRS reserves the right to make an award without further discussion of the proposal submitted. [NOTE: An exception is that the RFP Coordinator may contact the Respondent for clarification of a portion of the Respondent's proposal.] There will be no best and final offer process. Therefore, the proposal should be submitted initially on the most favorable terms the Respondent can propose.

### 2.11 OBLIGATION TO CONTRACT

This RFP does not obligate the State of Washington or DRS to contract for service(s) specified herein.

### 2.12 COSTS TO PROPOSE

DRS will not be liable for any costs incurred by the Respondent in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

### 2.13 COMMITMENT OF FUNDS

The Director of DRS or his delegate are the only individuals who may legally commit DRS to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

### 2.14 INSURANCE COVERAGE

Each Respondent must indicate in the letter of submittal and as a condition of contract award, that the Respondent will provide proof of insurance from the Respondent's insurance carrier, outlining the extent of Respondent's liability coverage.

The Company awarded the contract shall, at the Company's own expense, obtain and keep in force liability insurance and shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to DRS within fifteen (15) days of receipt of notice of award.

The Company shall at all times during the term of the contract carry and maintain liability insurance with the following minimum limits:

## Request for Proposals 99-11

- 1) Commercial General Liability Insurance: Covering bodily injury, property damage and contractual liability.

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
- 2) Business Auto Policy: As applicable, the Company shall carry and maintain automobile liability insurance with limits of \$1,000,000 per accident.

### 3. EXECUTIVE SUMMARY (mandatory but not scored)

Provide a high level summary of your proposal, highlighting the strengths, experiences, and background of your Company. The summary should be no more than three pages in length.

### 4. MANAGEMENT PROPOSAL

Provide all information requested in the exact order specified below:

#### 4.1 IDENTIFYING INFORMATION (mandatory but not scored)

- 4.1.1 State the business name, address, principal place of business, telephone number, and fax number of the legal entity or individual with whom the contract would be written. Indicate the location of the facility from which you will operate if awarded the contract for this RFP.
- 4.1.2 Provide the names, addresses, and telephone numbers of principal officers (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
- 4.1.3 Specify the legal status of the Company (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
- 4.1.4 Give a brief history of your Company's involvement in the consulting business, including the year of organization, current ownership and affiliations. Are ownership changes planned or anticipated at this time?
- 4.1.5 Explain any potential for conflict your Company would have in servicing the Department of Retirement Systems. Conflict may include consulting relationships, brokerage relationships, money management activities, fee

relationships with money managers, soft dollars, etc. What procedures are in place that would mitigate or eliminate potential conflicts of interest?

- 4.1.6 Provide your Company's federal employer identification number.
- 4.1.7 Provide your Washington State Department of Revenue Registration number (UBI number) if applicable.
- 4.1.8 If you are a minority and/or women business enterprise (MWBE), please provide your MWBE certification number. Unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of proposals, and no minimum level of MWBE participation shall be required as a condition of award.

4.2 EXPERIENCE OF THE COMPANY (mandatory, scored)

- 4.2.1 Describe your Company's consulting specialties, strengths, and limitations as they relate to the items outlined in Section 1.4.1 – 1.4.4 of this document.
- 4.2.2 Describe specific projects you have completed that demonstrate your Company's competency in the areas described in the scope of work as outlined in Sections 1.3 of this RFP. Please indicate the employer, date of the project, project scope and objectives, budget, and results directly attributable to your participation.
- 4.2.3 List the name and location of primary individual(s) who would be responsible for our account and provide brief biographies including titles, functions, academic credentials, and experience in the area of IRC 457 and IRC 401 (a) consulting. Identify and explain the role of back-up personnel.
- 4.2.4 The Respondent shall provide a minimum of three references that demonstrate the Respondent's ability to accomplish work similar in size and scope. The references should have knowledge of the key project team members proposed for this project. Reference information should include:
  - Name, title, and organization.
  - Services provided to reference.
  - Address.
  - Telephone and fax numbers.

5. TECHNICAL PROPOSAL

5.1 PROJECT SCOPE OF WORK (mandatory, scored)

Describe in detail the approach to be used in the execution of the required work as described in Section 1.3 of this RFP. The proposal must be in sufficient detail to convey the Respondent's knowledge of IRC 401 (a) and IRC 457 plans, as well as experience in writing and analyzing RFPs for third party record keeping vendors and transfer education services. For each of the following areas, describe your strategy and approach for accomplishing the work and meeting DRS's objectives.

5.1.1 Requirements Definition

Discuss your approach for validating business requirements and for using these requirements to prepare for a solicitation for record-keeping services and for member education services.

5.1.2 RFP Development and Evaluation

Describe your approach for assisting with developing and managing a solicitation for qualified vendors to provide record keeping services and member transfer education services that meet the state's requirements. A description of the evaluation process should be included.

5.2 WORK PLAN AND SCHEDULE (mandatory, scored)

Provide a detailed list of tasks and associated time frames for the required work as described in Section 1.3, Scope of Services. Include your estimate of the amount of dedicated DRS staff time required to accomplish these tasks.

6. COST PROPOSAL

6.1 IDENTIFY COSTS (mandatory, scored)

Using items identified in Section 1.3, Scope of Services, identify overall cost and expenses associated with each deliverable identified below:

- Written analysis and recommendation regarding the selection of a single provider for record keeping services for all plans versus multiple providers.
- Written documentation validating DRS's business requirements for record keeping services for one or more IRC 401 (a) plans and an IRC 457 plan and identifying any additional requirements as needed. Written review, including recommended changes, of DRS's draft RFP.
- Written review, including recommended changes, of DRS's draft proposal for transfer education services.

## Request for Proposals 99-11

- Assistance to DRS in administering the RFP process, including detailed RFP schedule.
- Documented analysis and recommendation for an equitable participant fee structure.
- Draft contracts for record keeping and transfer education services.
- Written strategy for migrating from current record keeping system(s) to one or more new record keepers.
- Presentations and/or other duties as may be required.

### 6.2 RATES (mandatory, not scored)

Proposed staff should be identified by name, hourly rate, and expected use during contract performance. The Company shall charge DRS only for staff specifically authorized by DRS to perform work at the rates set forth in the contract.

### 6.3 AWARD NOT BASED ON COST ALONE

The evaluation process is designed to award this procurement not necessarily to the Respondent of least cost, but rather to the Respondent whose proposal best meets the requirements of this RFP.

## 7. SUPPLEMENTAL INFORMATION

Each Respondent may present any supplemental information that the Respondent deems appropriate. The Respondent may also provide supporting documentation, as necessary, for evaluators to determine relevance and value.

## 8. EVALUATION AND CONTRACT AWARD

### 8.1 EVALUATION TEAM

The evaluation of proposals shall be accomplished by an evaluation team, to be designated by DRS, which will determine the proposal most responsive to the requirements stated in this RFP. Proposals will be evaluated strictly in accordance with the requirements set forth in this RFP and any addenda that are issued.

### 8.2 RESPONSIVENESS

Any proposal that does not adhere to the RFP format as specified may be considered non-responsive and not subject to further evaluation.

### 8.3 AWARD BASED ON MULTIPLE FACTORS

The evaluation process is designed to award the contract to the Respondent whose

## Request for Proposals 99-11

proposal best meets the requirements of this RFP. The final selection, if any, will be based on the evaluation committee's recommendation after analysis of the technical, management, and cost elements of the proposal and oral presentations, if required.

### 8.4 EVALUATION WEIGHTING CRITERIA

The following weighting will be used to score the proposals and select the finalists for interview, if appropriate:

1)	Management Requirements	55 percent
2)	Technical Requirements	30 percent
3)	Costs	15 percent

DRS, at its sole discretion, may elect to select the top two or more Respondents for an oral presentation and final determination of contract award. Commitments made by the Respondent at the oral interview, if any, will be considered binding. If interviews are conducted, the final selection will be based on the combined proposal and oral interview. Respondents with whom interviews are conducted will be asked to elaborate on the elements of their proposal.

### 8.5 NOTIFICATION TO UNSUCCESSFUL RESPONDENTS

Companies whose proposals have not been selected will be notified via FAX at the FAX number provided in their proposal.

### 8.6 GENERAL TERMS AND CONDITIONS

The apparently successful Respondent will be expected to enter into a contract with DRS which is substantially the same as the contract attached as Exhibit B, including DRS's General Terms and Conditions.

While the Respondent is free to propose changes to the Contract Terms and Conditions (Exhibit B), the Respondent is not to submit the Respondent's own standard contract terms and conditions as a replacement for those included in Exhibit B. The Respondent will be expected to enter into a contract with DRS that is substantially the same as the agreement included with this RFP as Exhibit B. A Respondent's request for substantial modification of the contract contained in Exhibit B will be viewed as a non-responsive proposal resulting in disqualification of the Respondent. Determination of what constitutes substantial modification rests solely with DRS.

### 8.7 DEBRIEFING OF UNSUCCESSFUL RESPONDENTS

Unsuccessful Respondents will be given the opportunity for a debriefing conference. The RFP Coordinator must receive the request for a debriefing conference within three (3) business days after the Notification of Unsuccessful Respondent letter is faxed to the Respondent. The debriefing must be held within

## Request for Proposals 99-11

three (3) business days of the request.

Discussion will be limited to a critique of the requesting Respondent's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

### 8.8 PROTEST PROCEDURE

This procedure is available to Respondents who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Respondent is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator.

Respondents protesting this procurement shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Respondents under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or DRS policy.

Upon receipt of a protest, DRS will hold a protest review. All available facts will be considered and the DRS Director or his delegate will issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event protest may affect the interest of another Respondent that submitted a proposal, such Respondent will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

## Request for Proposals 99-11

- Find the protest lacking in merit and uphold DRS's action; or
- Find only technical or harmless errors in DRS's acquisition process and determine DRS to be in substantially compliance and reject the protest; or
- Find merit in the protest and provide DRS options which may include:
  - Correct the errors and re-evaluate all proposals, and/or
  - Reissue the solicitation document and begin a new process, or
  - Make other findings and determine other courses of action as appropriate.

If DRS determines that the protest is without merit, DRS will enter into a contract with the apparently successful Respondent. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

### 8.9 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

All proposals received shall remain confidential until the successful Respondent(s) resulting from this RFP, if any, is announced by DRS's Director or the Director's designee. Thereafter, proposals shall be deemed public records as defined in Chapter 42.17 RCW (the Washington State statute pertaining to accessibility to public records) except as exempted in that chapter. Respondents are advised that the permissible exemptions from public disclosure pursuant to RCW 42.17 are very narrow in scope and strictly construed. In the event that a Respondent desires to claim portions of their proposal as exempt from disclosure under the provisions of the aforementioned RCW, it is incumbent upon that Respondent to clearly identify those portions in a proposal transmittal letter. The transmittal letter must identify the page and particular exemption(s) from disclosure upon which it is making its claim. Further, each page claimed to be exempt must be clearly identified by the word "CONFIDENTIAL" printed on the lower right-hand corner of the page. **Designating the entire proposal as confidential is not acceptable and will not be honored.**

If an official request is made to view a Respondent's proposal, DRS will respond in accordance with RCW 42.17.250 et seq. If any of the specifically requested information is marked as "confidential" in the proposal, such information will not be made available until three (3) business days after the affected Respondent has been given telephone notice that the information has been requested. If within those three (3) business days the affected Respondent has undertaken proceedings to obtain a court order restraining DRS from disclosure of the requested "confidential" information, DRS will not disclose such information until resolution of the court proceeding. Upon failure to make application for judicial relief within the allowed period, the information will be disclosed.

**NOTE:** The proposal of the successful Respondent(s) will be attached to the resulting contract and incorporated therein by that attachment. Therefore, as part of a public state agency contract, the entirety of the successful Respondent(s)' proposal will be subject to public disclosure regardless of any claim of



confidentiality or previously applicable statutory exemption. Nevertheless, should a successful Respondent obtain a court order from a Washington State court of competent jurisdiction prohibiting disclosure of parts of its proposal prior to the execution of the contract incorporating the same, DRS will comply with the court order. The burden is upon a successful Respondent to evaluate and anticipate its need to maintain confidentiality and to proceed accordingly. Timeliness will be of the essence; a delay in execution of the contract to accommodate a petition to the courts will not be allowed.

## 9. DRS RIGHTS

### 9.1 PROPOSAL REJECTIONS

Determination of clarity and completeness in the responses to any of the provisions in this RFP will be made solely by the DRS evaluation team. DRS reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.

DRS reserves the right to reject any or all proposals at any time prior to the execution of a contract acceptable to DRS, without any penalty to DRS.

### 9.2 CONTRACT AWARD

DRS intends to award the contract to the Respondent(s) with the best combination of attributes based on the evaluation criteria listed in Section 8 of this RFP. Should DRS fail to enter into a contract with the apparently successful Respondent(s), DRS reserves the right to award a contract to the next most qualified Respondent(s). DRS also reserves the right to contract with more than one Respondent.

### 9.3 PUBLICITY

No informational pamphlets, notices, press releases, research reports, and/or similar public notices concerning this project may be released by the apparently successful Respondent(s) without obtaining prior written approval from DRS.

### 9.4 WAIVERS

DRS reserves the right to waive specific terms and conditions contained in this RFP. It shall be understood by Respondents that the proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the Respondent has obtained such a waiver, in writing, from the RFP coordinator prior to submission of the proposal. Any waiver, if granted, will be granted to all Respondents.

### 9.5 RECORDS RETENTION

After the date of the announcement of the apparently successful Respondent(s),

## Request for Proposals 99-11

DRS will retain one master copy of each proposal received for a period of six years. However, due to limited storage capacity and workspace efficiencies, those copies may be moved from DRS headquarters to the Washington State Records Center in Tumwater, Washington, at the end of six months from the date of announcement of the apparently successful Respondent(s). Thereafter, accommodation of any request made pursuant to Chapter 42.17 RCW to examine and/or photocopy proposals submitted in response to this RFP will be necessarily delayed in order to retrieve the requested records. However, DRS will retain, at its headquarters, copies of the proposal(s) from the apparently successful Respondent(s) for a period of six years from the execution date of contracts resulting from this procurement.

### 10. APPENDIX

Exhibit A	Certification and Assurances
Exhibit B	Sample Contract with General Terms and Conditions
Exhibit C	Teachers' Retirement System Plan 3 Member Handbook
Exhibit D	Deferred Compensation Program Summary and Regulations

## **EXHIBIT A**

### **Request for Proposals No. 99-11**

#### **CERTIFICATIONS AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. The prices and/or data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
2. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by DRS without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
3. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this proposal. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. I/we understand and acknowledge that we are not eligible to submit a response to or be a part of any other company's response to the RFP issued for third-party record keeping or member transfer education services.
5. I/we understand that DRS will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the DRS, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Respondent and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Respondent or to any competitor.
7. No attempt has been made or will be made by the Respondent to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

---

**Signature of Respondent**

**Title**

**Date**

**EXHIBIT B**  
**SAMPLE DRS CONTRACT**

**Washington State Department of Retirement Systems**

**SAMPLE Contract**

For

**Consulting Services for RFP and Procurement of Third Party Record Keeper**

This contract is made by the Washington State Department of Retirement Systems (DRS), P.O. Box 43830, Olympia, Washington (hereinafter DRS), and CONTRACTOR.

**DEFINITIONS**

As used throughout this contract and attachments, the following terms shall have the meanings set forth below:

- A. “**Contractor**” shall mean COMPANY NAME, ADDRESS
- B. “**Contract Manager**” shall mean the agency representative identified in the text of the contract who is delegated the authority to administer the contract.
- C. “**DRS**” shall mean the Washington State Department of Retirement Systems as described in Chapter 41.50 RCW.
- D. “**Director**” shall mean the agency employee authorized by RCW 41.50.020 who serves as the executive and administrative head of DRS.
- E. “**Guidelines**” shall include the policies and procedures and other written instructions implemented by DRS.

**NATURE OF RELATIONSHIP**

During the term of this agreement, contractor may be consulted, on various occasions and under varying circumstances, by the Director of DRS, Deputy Director of DRS, the DRS Manager of Strategic and Quality Initiatives Unit, and the SERS Project Manager for education or technical information purposes consistent with the functions and assignments described in the scope of services section set forth below. Notwithstanding the provisions of Section II, *infra*, work pursuant to this agreement may be assigned by the Deputy Director of DRS, the DRS Manager of Strategic and Quality Initiatives Unit,

and the SERS Project Manager to perform various functions and assignments within the scope of services.

Prior to the commencement of any assignments or fulfillment of any requests beyond the scope of services defined by this agreement, the rendering of which could cause an increase in the fees set forth herein, contractor shall notify the appropriate contract manager designated in Section II, *infra*.

## **I. SCOPE OF SERVICES**

- A. The CONTRACTOR will provide service(s) and staff as set forth in the text of this contract instrument, the CONTRACTOR'S Proposal dated \_\_\_\_\_ attached hereto as Exhibit A, and the AGENCY'S Request for Proposals attached as Exhibit B.
- B. The contractor shall provide DRS with such services as described in this contract and Exhibits A, and B in accordance with the terms and conditions of this contract, the objectives and guidelines established by DRS, the legal limitations imposed on DRS, and specific directives or instructions issued by DRS to contractor.
- C. DRS shall furnish contractor such evidence of authority of the persons authorized to act on behalf of DRS, together with their specimen signatures, as contractor may reasonably request.
- D. All related reports shall be sent to: ATTN: SERS Project Manager, Washington State Department of Retirement Systems, P.O. Box 48380, Olympia, Washington 98504-8380.

## **II. CONTRACT MANAGER**

The SERS Project Manager is designated as the contract manager for the contractual relationship. The contract manager will be responsible for:

- A. Overall direction and planning;
- B. Monitoring contractor progress against contractual commitments and approving payment; and
- C. Designating specific DRS staff for day-to-day liaison with contractor.

## **III. COMPENSATION**

- A. **Fees:** DRS shall make payments to contractor for products produced under this contract as defined in Exhibit A. Payment shall be made no later than thirty days

after acceptance of the specific product and receipt of a properly submitted and correct invoice. Acceptance of products will be the sole responsibility of the contract managers. If payment(s) will be delayed due to nonperformance, written notification to the Contractor will be provided within 10 days from the receipt date of product(s).

No more than two invoices per month will be allowed. Each invoice must include company name, address and telephone number, invoice number, federal identification number, contract number, description of specific product(s) produced, the associated payment amount(s), and an invoice total.

Invoices shall be directed to: ATTN: SERS Project Manager, Washington State Department of Retirement Systems, P.O. Box 48380, Olympia, Washington 98504-8380.

Payment shall be made on completion of services as specified in Exhibit A. The total payments to be made under this contract are as follows:

---

---

---

The contractor will follow the State of Washington and Office of Financial Management (OFM) guidelines for all travel and per diem expenses.

Pending successful completion of all deliverables and all phases, total payment for services under this contract shall not exceed .

- B. **Payment of Taxes:** Contractor shall pay all applicable taxes assessed on the compensation received under this contract and shall identify and pay those taxes under contractor's federal and state identification number(s).
- C. **Withholding of Payment:** DRS reserves the right to withhold payment for non-compliance and/or non-performance with the terms and scope of work of this agreement. Payment shall not be unreasonably withheld. Nothing herein impairs the right of DRS to terminate the contract as set forth in Section V., *infra*.

Additionally, DRS reserves the right to offset against payments due the contractor any delinquent payment due to DRS from the contractor. For these purposes, a payment is delinquent if it is not paid within thirty (30) days of transmittal to the contractor of an invoice setting forth the amount due and the justification therefor.

#### IV. TERM

This contract shall be effective when executed by both parties on or around April 16, 1999, and shall expire on December 31, 1999, unless terminated sooner under other provisions of this contract. If circumstances beyond the contractor's control delay the

project opening part's completion, the contractor will fulfill the work at no extra cost to DRS.

DRS reserves the option to extend the term of this contract. In the event that DRS elects to exercise its extension option, it shall notify contractor of its decision to extend the term of the contract by giving written notice to contractor at least thirty (30) days in advance of the then current expiration date. Any renewal of this contract shall be upon the terms and conditions as provided herein.

## **V. TERMINATION**

- A. **Termination For Default:** The Director of DRS may, by written notice, terminate the contract in whole or in part, for failure of contractor to perform any of the material provisions hereof or if such performance by contractor falls below prevailing industry standards. In such event contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, (i.e., cost of the competitive bidding, mailing, advertising and staff time); **Provided**, that if (i) it is determined for any reason the contractor was not in default, or (ii) contractor's failure to perform is without his or her and/or his or her subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience."
- B. **Opportunity to Cure Default:** DRS shall not invoke the provisions of subparagraph "A" immediately preceding, unless the contractor is afforded the opportunity to cure the default within a period of prescribed by DRS, in its sole discretion, and until the expiration of the cure period so established. The duration of the cure period will be determined by DRS by reasonably weighing several factors relevant to the default which will include, but not be limited to: how critical performance failure rectification is to DRS operations; lead-time afforded to the contractor to complete the performance or assignment in the first instance; repetition, if any, of the particular performance default; accumulation in number, if any, of other performance defaults which the contractor has timely cured; and, attribution of the default to willful disregard or carelessness on the part of the contractor.
- C. **Termination For Convenience:** DRS has the right to terminate the contract by giving written notice to contractor at the address previously given in this contract, at least five (5) business days before the effective date of termination.
- D. **Termination Procedure:** Upon termination of this contract DRS, in addition to any other rights provided in this contract, may require contractor to deliver to DRS any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

DRS shall pay to contractor the agreed upon price, if separately stated, for completed work and services accepted by DRS, and the amount agreed upon by contractor and

the Director of DRS for (1) completed work and services for which no separate price is stated, (2) partially completed work and services, (3) other property or services which are accepted by DRS, and (4) the protection and preservation of property, unless the termination is for default, in which case the Director of DRS shall determine the extent and liability of DRS. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" section of this contract. DRS may withhold from any amounts due to contractor such sum as the Director of DRS determines to be necessary to protect DRS against potential loss or liability.

The rights and remedies of DRS provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Contract Manager, contractor shall:

1. Stop work under the contract on the date, and to the extent, specified in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Assign to DRS, in the manner, at the times, and to the extent directed by the contract manager all of the rights, titles, and interest of contractor under the orders and subcontracts so terminated, in which case DRS has the right, at their discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the contract manager to the extent they may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer relevant title to DRS and deliver in the manner, at the times, and to the extent, if any, as directed by the contract managers, any property which, if the contract had been completed, would have been required to be furnished to DRS;
6. Complete performance of such part of the work as shall not have been terminated;  
and
7. Take such action as may be necessary, or as the relevant contract manager may direct, for the protection and preservation of the property related to this contract which is in the possession of contractor and in which DRS has or may acquire an interest.

By such termination, neither DRS nor contractor may nullify obligations already incurred for performance or failure to perform prior to the date of termination. In the event the



termination date does not coincide with the last day of a quarter, the contractor shall be entitled to a prorated portion of the fee for the quarter during which termination occurs.

## **VI. CONFLICT OF INTEREST**

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any significant manner or degree with the performance of services required under this contract. The Agency may, by written notice to the Contractor, terminate this contract if it is found after due notice and examination by the Agency that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agency makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

## **VII. INDEPENDENT CAPACITY OF THE CONTRACTOR**

Contractor and his or her employees or agents performing under this contract are not employees or agents of DRS. Contractor will not hold himself or herself out as, nor claim to be, an officer or employee of DRS or of the state of Washington by reason of this contract, nor will he or she make any claim of right, privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

## **VIII. NONDISCRIMINATION**

During the performance of this contract, contractor shall comply with all federal and state nondiscrimination statutes and regulations. The requirements include, but are not limited to:

- A. Nondiscrimination in Employment:** Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental or physical disability. Nondiscrimination in employment shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment selection for training, including apprenticeships and volunteers. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of an individual of a particular

religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

**B. Nondiscrimination in Client Services:** Contractor shall not, on grounds of race, color, sex, religion, national origin, creed, marital status, age or the presence of any sensory, mental or physical disability:

1. Deny an individual any services or other benefits provided under this contract;
2. Provide any service(s) or other benefits to an individual which are different, or are provided in a different manner, from those provided to others under this contract;
3. Subject an individual to segregation or separate treatment in any manner related to the receipt of any service(s) or other benefits provided under this contract; or,
4. Deny any individual an opportunity to participate in any program provided by this contract through the provision of services or otherwise, or afford any opportunity which is different from that afforded others other this contract.

Contractor, in determining (1) the types of services or other benefits to be provided or (2) the class of individuals to whom, or the situation in which, which services or other benefits will be provided or (3) the class of individuals to be afforded an opportunity to participate in any services or other benefits, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, sex, religion, national origin, creed, marital status, age or the presence of any sensory, mental or physical disability.

## **IX. NONCOMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS**

In the event of contractor's noncompliance or refusal to comply with the nondiscrimination requirements, this contract may be rescinded, canceled or terminated in whole or in part, and contractor may be declared ineligible for further contracts with DRS. Contractor shall, however, be given a reasonable time in which to cure the noncompliance. Any dispute may be resolved in accordance with the Disputes section set forth in this agreement.

## **X. HOLD HARMLESS AND INDEMNIFICATION**

Contractor agrees that it is financially responsible (liable) for any audit exception or other financial loss to the state of Washington which occurs due to the negligence, intentional acts, or failure for any reason, to comply by contractor and/or its agents, employees, subcontractors or representatives with the terms of this contract.

Contractor further agrees to protect and save the state, its elected and appointed officials,

agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of contractor's employees or third parties on account of personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of contractor and/or its agents, employees, subcontractors or representatives under this contract.

## **XI. COVENANT AGAINST CONTINGENT FEES**

Contractor agrees that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by contractor for the purpose of securing business. For breach of this guarantee, DRS may terminate this contract and make no payment for services under the contract without liability, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

## **XII. TREATMENT OF ASSETS**

- A. Title to all property furnished by DRS shall remain in the name of DRS. Title to all property purchased by contractor for which contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in DRS upon completion, termination or cancellation of this contract. Contractor reserves the right to maintain current copyrights on current contractor material and the right to copyright any material purchased by the contractor (but has not been reimbursed to the contractor as a direct cost) that has general application and other utility for other clients of the contractor.
- B. Any property of DRS furnished to contractor shall, unless otherwise provided in this contract, or approved by DRS, whichever is applicable, be used only for the performance of this contract.
- C. Contractor shall be responsible for any loss or damage to property of DRS which results from the negligence of contractor or which results from the failure on the part of contractor to maintain and administer the property in accordance with sound management practices.
- D. If any DRS property is lost, destroyed or damaged, contractor shall immediately so notify DRS and shall take all reasonable steps to protect the property from further damage.
- E. Contractor shall surrender to DRS all property of DRS prior to settlement upon completion, termination or cancellation of this contract.

- F. All reference to contractor under this clause shall include any of his or her employees or agents (or subcontractors if the contract allows).

### **XIII. ASSIGNABILITY**

- A. **Nonassignability of Claims:** No claim arising under this contract shall be transferred or assigned by contractor.
- B. **Nonassignability of Contract:** This contract is not assignable by contractor.

### **XIV. RECORDS, DOCUMENTS, AND REPORTS**

Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by DRS, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. Contractor shall retain all books, records, documents, and other materials relevant to this contract for five years after settlement, and make them available for inspection by persons authorized under this provision.

### **XV. CONFIDENTIALITY**

Contractor shall maintain as confidential all information concerning its study findings and recommendations, as well as the business of DRS, their financial affairs, relations with their clientele and their employees, and any other information which may be specifically classified as confidential by DRS in writing to contractor. To the extent consistent with RCW 42.17.250 et seq. ("The Public Disclosure Act"), DRS shall maintain all information which contractor specifies in writing as confidential. Contractor shall have an appropriate contract with its employees to this effect.

### **XVI. RIGHTS IN DATA**

Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U. S. Copyright Act of 1976 and shall be owned by DRS. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

Data which is delivered under the contract, but which does not originate from the contract shall be transferred to DRS with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; **provided**, that such license shall be limited to the extent which contractor has a right

to grant such a license. Contractor shall exert all reasonable effort to advise DRS, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such documents which was not produced in the performance of this contract. DRS shall receive prompt written notice of each notice or claim of copyright infringement received by contractor with respect to any data delivered under this contract. DRS shall have the right to modify or remove any restrictive markings placed upon the data by contractor.

## **XVII. SUBCONTRACTS, CONTRACT PROGRAMMING, ETC.**

Contractor shall not enter into subcontracts for any of the work or services contemplated under this contract unless specifically approved in writing by DRS prior to the commencement of subcontracted work. Should subcontracting be deemed necessary for successful performance of this contract, DRS will require compliance with Washington State competitive procurement requirements for selection of the subcontractor(s). This does not include contracts of employment between contractor and personnel assigned to work under the contract.

## **XVIII. REGISTRATION WITH DEPARTMENT OF REVENUE**

Contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia, Washington 98504, if applicable, and be responsible for payment of all taxes due on payments made under this contract.

## **XIX. LICENSING AND ACCREDITATION STANDARDS**

Contractor shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards, necessary in the performance of this contract.

## **XX. WORKERS' COMPENSATION INSURANCE COVERAGE**

Contractor shall provide or purchase applicable workers' compensation insurance coverage prior to performing work under this contract. DRS will not be responsible for payment of industrial insurance premiums for this contractor, or any subcontractor or employee of contractor, which might arise under the workers' compensation insurance laws during performance of duties and services under this contract. Should contractor fail to secure workers' compensation insurance coverage or fail to pay premiums on behalf of its employees, DRS may deduct the amount of premiums owing from the amounts payable to contractor under this contract and transmit the same to the appropriate workers' compensation insurance fund.

## **XXI. RIGHTS OF INSPECTION**

Contractor shall provide right of access to its facilities to DRS, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

## **XXII. ADVANCE PAYMENTS PROHIBITED**

DRS will make no payment in advance or in anticipation of services or supplies to be provided under this contract.

## **XXIII. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, DRS may terminate the contract under the Termination for Convenience section (without the five-day notice requirement), subject to re-negotiation under those new funding limitations and conditions.

## **XXIV. LIMITATION OF AUTHORITY**

Except in the case of any extension of time, only the Director of DRS or the Director's delegate by writing (delegation to be made prior to action) shall have the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Director of DRS or the Director's designee (Designee).

## **XXV. LETTERS OF EXTENSION**

Should the need arise to extend the time for performance of this contract, which need is in no way attributable to the negligence, misfeasance or malfeasance of any party to this contract, the contract managers, on behalf of DRS, may execute a letter of extension with contractor. The letter of extension must be acknowledged by the written signature of an authorized representative of contractor. Should any other term or aspect of the contract be affected by a time extension, this section is inoperative.

## **XXVI. WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the

terms of the contract unless stated to be such in writing, signed by the Director of DRS or Designee.

## **XXVII. CHANGES TO CONTRACT**

The Director of DRS may, at any time, by written notification to contractor, and without notice to any known guarantor or surety, make changes within the general scope of the services to be performed under the contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price, or period of performance, or both, and the contract shall be modified in writing accordingly. Any claim by contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by contractor of the notice of such change; **provided**, however, that the Director of DRS may, if the Director decides that the facts justify each action, receive and act upon such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the section of this contract entitled "Disputes." However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

## **XXVIII. DISPUTES**

Prior to the initiation of litigation or arbitration under this contract, and when a *bona fide* dispute arises between DRS and contractor, and it cannot be resolved by agreement, either party may request a dispute hearing with the Director of DRS or its Designee. Either party's request for a dispute hearing must be in writing and clearly state:

- A. the disputed issues;
- B. the relative positions of the parties;
- C. the desired resolution of the dispute; and,
- D. the contractor's name, address, and his or her contract number.

These requests must be mailed to the Director of DRS at the address for DRS set forth in the text of the contract, within fifteen (15) days after either party receives notice of the issue(s) which he or she disputes. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal or any commencement of arbitration.

## **XXIX. GOVERNING LAW**

This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in the Superior Court of the State of Washington, in, and for, Thurston County, Olympia, Washington. Contractor, by execution of this contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

### **XXX. SERVICE OF PROCESS**

Contractor shall designate a registered agent for service of process in all matters concerning the contract. If no other agent is designated, contractor shall designate the Secretary of the State of Washington as registered agent for service of process.

### **XXXI. SEVERABILITY**

If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provisions, and to this end the provisions of this contract are declared to be severable.

### **XXII. CONFORMANCE WITH STATUTES AND RULES OF LAW**

If any provisions of this contract shall be deemed in conflict with any statute or rule of law, such provisions shall be deemed modified to be in conformance with said statute or rule of law.

### **XXXIII. SCOPE OF CONTRACT**

This contract and the attachments listed in Section I. A. incorporate all the contracts, covenants and understandings between the parties concerning the subject matter, and all such covenants, agreements and understandings have been merged into this contract. No prior contract or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this contract.

### **XXXV. CHANGE OF CONTROL OR PERSONNEL**

Contractor shall promptly, and in any case within twenty-four (24) hours, notify DRS in writing:

- A. If any of the representations and warranties of the contractor set forth in this contract shall cease to be true at any time during the term of this contract;
- B. Of any material change in the contractor's Senior Staff;



- C. Of any change in control of the contractor or in the business structure of the contractor; or
- D. Of any other material change in the contractor's business, partnership or corporate organization relating to the Assigned Account. All written notices regarding changes in Senior Staff shall contain the same information about newly assigned Senior Staff as was requested by DRS in the Request for Proposal and such additional information as may be requested by DRS. For purposes hereof, the term "Senior Staff" shall mean those persons identified as senior management in any response to a Request for Proposal or who otherwise will exercise a major administrative role or major policy or consultant role to the provision of the contractor's services hereunder. All written notices regarding changes in control of the contractor shall contain the same information about any new controlling entity as was requested by DRS in the Request for Proposal regarding the contractor and such additional information as may be requested by DRS.

Approval of these changes rests solely with DRS and will not be unreasonably withheld. This contract, consisting of *fourteen (14) pages and one (1) attachment*, is executed by the persons signing below who warrant that they have the authority to execute this contract.

**DEPARTMENT OF RETIREMENT SYSTEMS**

**COMPANY**

By: \_\_\_\_\_  
**Maureen Westgard-Long**  
Deputy Director

By: \_\_\_\_\_  
**Name and Title**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_